

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-07
(June 19, 1996)

**Propriety of a Judge Signing
Nominating Petitions**

Issue

Can a judge sign a petition to place a candidate on the primary election ballot?

Answer: Yes, with qualifications.

Discussion

This question is governed by Canon 5, which states that "[a] judge or judicial candidate shall refrain from inappropriate political activity." Canon 5A(1) expressly prohibits certain political activity, but signing a nominating petition is not a prohibited act.

The content of a nominating petition is governed by statute. A.R.S. § 16-314(C). In essence, it is a voter's request that an aspirant be placed on the ballot. No endorsement of the candidate is required. The signatory cannot, however, sign other nominating petitions for the same office unless there are multiple vacancies. A.R.S. § 16-321(A); see §16-314(C) (prescribing text of nominating petition).

The commentary to Canon 5A advises: "A judge or candidate for judicial office retains the right to participate in the political process as a voter." The language of this advice is well-chosen. It does not merely say that a judge can vote. Instead, it allows the judge to "participate in the political process" just as any voter might. One aspect of such participation is the signing of nominating petitions.

A nominating petition does not contain a promise to vote for the nominee or any endorsement of the nominee. The restriction on the number of petitions that any given elector may sign appears to be a device to ensure the earnestness of signatories and does not imply an endorsement. Accordingly, we find nothing inappropriate in the signing of a petition. Such activity is normal participation in the political process by a voter that Canon 5A intends to permit.

We believe, however, that the signing of a nominating petition is more problematic for a judge in a sparsely populated county where fewer signatures are required and a judge's signature is more likely to draw attention. In a small county, a judge's signature on a nominating petition could be perceived as an endorsement and could become a problem if the petition is challenged in the judge's court. In this situation, any potential conflict can be avoided simply by declining to sign petitions.

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Our opinion rests on the understanding that nominating petitions are not intended to be used by candidates as endorsements. A judge should not sign a petition if the judge's signature could be misused as an endorsement.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 5A(1) (1993).